IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 492 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRADYUMNBHAI S KARMADWALA

Versus

AMBALAL D SOLANKI

Appearance:

MR SJ MEHTA for MR YN OZA for the Petitioner

MR AR MAJMUDAR for the Respondent No. 1

RULE SERVED for the Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/10/2002

ORAL JUDGEMENT

This Revision Application has been preferred under Section 29(2) of the Bombay Rents, Hotel and

Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act') by the appellant plaintiff against the judgment and order dated 3rd April, 1987 passed by the learned Assistant Judge, Vadodara in Civil Appeal No.55/1986. The disputed premises is a residential block in a cooperative housing society. The plaintiff claimed to be a tenant thereof. The plaintiff filed Rent Suit No.442/1981 in the Court of Small Cause, Vadodara for a declaration that the plaintiff was the tenant in the suit block and for an injunction that the defendants should not disturb the plaintiff's possession of the suit block.

The defendants, the owners of the suit block, contested the suit by filing written statement (Ex.12). According to the defendants, the defendant no.1 was the owner of the suit block. The defendant no.2, the brother of the defendant no.1, was residing in Vadodara and was managing the suit block. One Anandiben, a resident of Village Bhoj, the mother-in-law of the plaintiff, was known to the defendants. She was sick and required to undergo medical treatment at Vadodara. The defendants, therefore, allowed the said Anandiben and her husband to occupy the suit block temporarily while said Anandiben was taking medical treatment at Vadodara. No rent was charged from the said Anandiben. After the treatment, the said Anandiben and her husband vacated the suit block and handed over the possession thereof to the defendants on 3rd August, 1981. However, the plaintiff broke upon the lock of the defendants and forcibly entered the suit block on or about 6th August, 1981. It was, thus, denied that the plaintiff was the tenant in the suit block and that he was charged any rent. The learned trial Judge, under the judgment and order dated 6th January, 1986, dismissed the suit for declaration as well as for injunction.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No.55/1986 in the Court of District Judge, Vadodara. The learned Assistant Judge, Vadodara, under the impugned judgment dated 30th April, 1987, confirmed the judgment of the trial Court and dismissed the appeal. Feeling aggrieved, the plaintiff has preferred the present Revision Application.

Mr.Mehta has submitted that the Courts below have failed to appreciate the evidence before it. The plaintiff had produced a chit (Ex.31) indicating that the plaintiff was in possession of the suit premises and was called upon to vacate the same. In the submission of Mr.Mehta, the said chit (Ex.31) has not been considered

by the trial Court at all, while the lower Appellate Court did not give the said chit due weightage.

I am unable to accept the submission made by Mr.Mehta. Both the Courts below have closely examined the evidence on record and have recorded a finding that the plaintiff was not the tenant in the suit block. The defense that the suit block was given to Anandiben for temporary use and, that on 3rd August, 1981 the said Anandiben had handed over the possession of the suit block to the defendants is believed. Besides, the Court below has given cogent reasons for not relying upon the chit (Ex.31). First, the defendant has refused that the handwriting on the said chit is that of the defendant no.1. The said chit was addressed to one Parasben. She has not been examined. The plaintiff has not explained how did he come into the possession of the said chit. The plaintiff has failed to prove the tenancy. There is no evidence worth the name which would establish the relationship of landlord and tenant between the defendant no.1 and the plaintiff. The plaintiff has not brought forth any written or oral agreement of tenancy. The plaintiff has not shown that he had paid the rent for the suit block every month as claimed by him. The ration card (Ex.30) also has been issued after the disputed date. The evidence of plaintiff's possession of the suit block in relation to the period after the alleged trespass by the plaintiff or while the said Anandiben was in possession of the suit block is of no relevance. The plaintiff has not produced any documentary evidence to show that he was in possession of the suit block before the date of the alleged trespass.

The plaintiff has failed to prove that he was inducted in the suit block as a tenant. It is more than apparent that the plaintiff has taken undue advantage of the circumstances and has entered into suit block without the authority of law. I am of the view that both the Courts below have rightly held that the plaintiff was not the tenant of the suit premises and have rightly dismissed the suit for declaration and injunction.

The learned advocate Mr.Mehta states that he is not aware whether the plaintiff deposited any money towards the rent/mesne profits/occupancy fee pending the suit and the appeal. However, this Court (Coram:A.S.Qureshi, J.) had, on 23rd July, 1987, made order as under :

"Rule. Mr.P.B.Majmudar appears and waives service of Rule. Mr.Majmudar has urged that the

> petitioner be not granted interim relief regarding possession as he is a trespasser. This question can not be gone into at this stage. Hence the submission of Mr.Majmudar is rejected. However, he has urged that in any case the petitioner should be directed to deposit the arrears of mesne profit from 1-5-1981 till this date. There again as regards the payment of rent, there is a dispute between the parties, which will have to be decided in this Revision whether the petitioner did or did not pay the monthly rent. However, the petitioner is bound to deposit in the trial court a sum of Rs.120=00 p.m. as rent/mesne profit from the date of the suit till today on or before 31-8-1987. Interim stay regarding possession on condition that the petitioner deposits the arrears of rent/mesne profits from 1-5-1981 till today on or before 31-8-1987 in the trial court and thereafter continue to deposit Rs.120=00 every month. Interim stay to continue till disposal of the Revision Application. Respondents are at liberty to withdraw the amounts so deposited."

Hence, it appears that the plaintiff had not deposited any money pending the suit or the appeal. Mr.Mehta is unable to say whether the above order dated 23rd July, 1987 has been complied with or not. He says that the suit block is a three room premises. The learned advocate Mr.A.R.Majmudar is also not present and no information can be gathered from him. In the circumstances, I make order as under :

The Revision Application is dismissed with costs. The petitioner - plaintiff will deposit mesne profits/occupancy fee in the Court at the rate of Rs.150=00 every month commencing from 6th August, 1981 till 5th August, 1991. For the period commencing from 6th August, 1991 till 5th August, 2001, the plaintiff will deposit a sum of Rs.350=00 for every month of his occupancy of the suit block. For the period from 6th August, 2001 till 5th October, 2002, the plaintiff will deposit a sum of Rs.650=00 as occupancy fee/mesne profits for every month of his occupancy. For the period commencing from 6th October, 2002, the petitioner will deposit a sum of Rs.950=00 every month regularly by 15th day of the concerned month. The defendant no.1 will be entitled to withdraw the amount so deposited. The above amount of mesne profits for the period from 6th August, 1981 till 5th October, 2002 shall be deposited on or before 31st March, 2003. It is observed that if the

petitioner has deposited any amount pursuant to the above referred order dated 23rd July, 1987 or any other amount towards the mesne profits or the occupancy fee, the same shall be adjusted against the amount to be deposited under this order.

It is clarified that this order shall not preclude the defendant no.1 from claiming mesne profits by resorting to appropriate legal proceedings. If such proceedings are already initiated or are initiated hereafter, any amount that the Court directs the plaintiff to pay as mesne profits, deposit made under this order shall be adjusted against such amount of mesne profits. Subject to the above directions, the rule is discharged. The Registry is directed to send the writ forthwith.

(Ms. R.M. Doshit, J.)

/sakkaf